IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SECOND DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 22268 of 2004

Between:

Smt. P. Rajalakshmi W/o late P.V. Radha Krishna
R/o H. No. 3-35, Main Road, Uppal Hyderabad

..... PETITIONER

AND

The Regional Commissioner of Coal-Mines Provident Fund, Situated at Municipality Office, Godavarikhani, Karimnagar District

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court MAY be pleased to issue Writ order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondent herein in not releasing the full CMPF amount to the petitioner husband by retaining the management contribution of the Provident Fund amounting to Rs. 42,997/- since 02-02-1994 as arbitrary, illegal and against the principles of natural justice and contrary to Article 14 of the Constitution of India and consequently direct the respondent to pay the CMPF amount of Rs. 42,997/- together with 12% interest of from 02-02-1994 to the petitioner immediately.

Counsel for the Petitioner: MR.P.LALITHA KAMESH

Counsel for the Respondent: MR.A. RAJASHEKAR REDDY (SC FOR CG)

The Court at the admission stage made the following :

The Hon’ble Sri Justice

K.C. Bhanu

W.P. No. 22268 of 2004

O R D E R:

The present writ petition is filed seeking to declare the action of the respondents herein in not releasing the full CMPF amount to the petitioner's husband by retaining the management contribution of the Provident Fund amounting to Rs.42,997/- since 2.2.1994 as arbitrary and illegal.

The brief facts that are necessary for the disposal of the present writ petition may be stated as follows:

The husband of the petitioner worked as trained graduate assistant in the Singareni Collieries High School, Mandamarri, Adilabad District, having been appointed on 22.7.1977. He became the CMPF member on 1.3.198 vide CMPF account No.Hyd//138/16. He contributed to the CMPF till the date of retirement on superannuation from services on 31.5.1992. The Coal Mines Provident Fund (for short, 'CMPF') is a contributory provident fund in which the management authority used to deduct 8¾ of the basic pay of the employee and added similar share from the management and deposited the same into the individual CMPF account of the concerned employee or teacher. Accordingly similar ratio of amounts were also deducted from the salaries of Late P.V. Radha Krishna by the school management and by adding their share deposited into the CMPF account of Late P.V. Radha Krishna. The respondent-authority after receiving CMPF claim forms from the husband of the petitioner

when he was alive through the school management on 25.7.1993 had paid only half amount accumulated in the CMPF A/c. No. Hyd/7/138/16 on 2.2.1994 and retained illegally other half of amount Rs.42,997/- and the same remained unpaid to the husband of the petitioner during his life time or till today. In a similar case an interim direction was given by this court in WPMP No. 30252 of2002 in W.P. 24089 of 2002 directing the respondents therein to settle the retrial benefits and pay the same to the petitioner therein by name K. Laxmipathi Rao, within one month. Accordingly the Regional Commissioner, CMPF has paid the concerned teacher full provident fund amount including the contribution of the management without retaining the 50% as done in the case of the petitioner's husband. There upon the petitioner got issued a legal notice dated 21.7.2004 but the respondent did not respond to the same. Hence the present writ petition.

The respondent filed counter affidavit stating that the petitioner's husband P.V. Radhakrishna was a CMPF member and he nominated none as nominee to receive the accumulated CMPF amounts in the event of his death. He was appointed as teacher in the Singareni Collieries School on 20.7.1977. He became a member of CMPF from 8.6.1978. Subsequently in the year 1981-82 the Government of Andhra Pradesh had admitted the school into grant in aid. From 1.6.1981 onwards he was working in grant in aid school receiving his pay etc. from the Government of A.P. through District Educational Officer. He had also become a member of the Teachers Provident Fund in order to get the retirement benefits like Government pension, Government gratuity and also drawn the Government salary. The management could have stopped the CMPF

at that stage, but he was contributing to CMPF as well as Teachers Provident Fund. The petitioner's husband retired from service on 31.5.1992. His refund claim for 50% of the CMPF amount as was forwarded by the Singareni Collieries Company was settled by the office on 31.1.1994. The respondent office has released the members' share only as per the advise given by the Collieries authorities vide letter dated 7.12.1993. The employee's share is withheld for clarification from the collieries authorities. The petitioner has not made the Singareni Collieries Company Limited represented by its General Manager and other concerned authorities as party respondents who are necessary and proper parties to the writ petition and there are no grounds to allow the writ petition.

In the reply to the counter affidavit, it is stated that the petitioner's husband was not a member of the Teachers Provident Fund and no such accounts exist even till today. There is gross negligence on the part of the respondent in not paying the contributions. Hence, the petitioner prays to allow the writ petition.

Learned counsel for the petitioner contended that from 1.3.1978 on which date the CMPF account was opened in the name of the petitioner's husband, he contributed the provident fund till the date of his superannuation. In a similarly situated case of K. Laxmipathi Rao, full amount was given without retaining 50% of the employer's contribution as was done in the case of the husband of the petitioner and that as per G.O.Ms.No.2513 dated 24.10.1966 a teacher who retired from service or who resigned after 1.4.1961 is entitled to receive the amount of Provident Fund subscription along with the contribution of the Local Body, which is termed as Bonus in

his Provident Fund Account, maintained by the local body and therefore the petitioner is entitled for employer's contribution of 50% and therefore he prays to allow the writ petition.

On the other hand, learned counsel for the respondent contended that when the school is taken over by the Government, the husband of the petitioner is ceased to be a member of CMPF account. Though he continued to pay the Provident Fund amount and the management also continued to pay its share of Provident Fund, that does not mean that the husband of the petitioner is entitled for the Provident Fund contributed by the management and the amount contributed by the petitioner's husband has been released and therefore there are no grounds to grant any relief.

The facts are not in dispute. Originally the husband of the petitioner was appointed as a trained graduate assistant in Singareni Collieries High School, Mandamarri on 22.7.1977. It is also not in dispute that he became CMPF member on 1.3.1978 vide CMPF Account No.Hyd/7/138/16. It is also not disputed before this court that the husband of petitioner contributed to the CMPF till the date of retirement on superannuation i.e. 31.5.1992. It is also not disputed before this court that in the year 1981-82 the Government of A.P. had admitted the school into grant in aid. When the school was admitted into grant in aid, the service conditions governing the Government employee would apply. The pay was being received by the husband of the petitioner by the Government of A.P. through District Educational Officer. It is not disputed before this court that after retirement the husband of the petitioner received pension and thereafter the petitioner was receiving pension. It is also not disputed

that the Government has paid gratuity at the time of retirement. Therefore, the husband of the petitioner was no longer an employee of the Singareni Collieries on or after 1.6.1981. There was no obligation on the part of the petitioner's husband to pay CMPF amount thereafter. But, as a matter of fact the husband of the petitioner had been contributing the CMPF as well as the Teachers Provident Fund even thereafter. At the same time, the Singareni Collieries also contributed the employer's share of Provident Fund into the account of the petitioner's husband. When the Government granted grant in aid to all the employees working in the school, there is absolutely no reason for the employer to deposit its contribution towards the Provident Fund. Till the Government admitted the school into grant in aid the Singareni Collieries was bound to contribute its share of provident fund to the employees. The General Manager issued a clarification to the respondent dated 9/11.7.1993 stating that as the husband of the petitioner was availing the facility of pension provided by the Government in accordance with Circular No.P.38/3312/ST/2153 dated 8.6.1978, the incumbent will not be entitled to the benefit of CMPF and therefore he felt that since the incumbent is availing the Government pension as he was in Aided post, it would suffice to pay him the part of his contribution to the CMPF together with interest as per entitlement duly withholding the employer's contribution with interest. The letter dated 25.7.1993 addressed by the Singareni Collieries to the Assistant Commissioner of CMPF made it clear that since the petitioner's husband was in grant in aid treating him on par with Government servants, he was paid gratuity as per Government rules and also being paid pension as per Government rules. Insofar as he is enjoying the benefits of the

pension scheme of the Government, he is neither eligible nor entitled for the benefit of CMPF. However, at the most, he may be eligible for the amount he contributed towards CMPF and in no case he is eligible for employer's contribution to CMPF. Therefore, the claim for the settlement of CMPF is not tenable. The said proceedings has not been challenged as on today. It is also made clear in the above proceedings that when a particular staff is admitted into grant in aid, he must become member of Teachers Provident Fund in order to get the retirement benefits like Government pension, Government gratuity and also to become eligible to draw the Government salary. In such case, when the school is admitted into grant in aid, the husband of the petitioner ceased to be a member of CMPF because once a member was admitted into grant in aid, he must be a member of Teachers Provident Fund. The employee cannot have double benefit of the Provident Fund i.e. one from the management and the other from the Government. The G.O. relied on by the learned counsel for the petitioner in G.O.Ms.No.2513 dated 24.10.1966 does not indicate that after the posts are admitted into grant in aid, the employee is entitled for the benefits of the Provident Fund from the management as well as from the Government. So, the above G.O. relied upon by the learned counsel for the petitioner has no application to the present facts of the case. Therefore, this court is of the considered view that the respondent has rightly released the employee's share of contribution of Provident Fund. Simply because the case of K. Laxmipathi Rao was considered and decided in pursuance of an interim direction given by this court, it does not mean that the petitioner is entitled for the same benefit. The relief given to Laxmipathi Rao is only by way of interim direction and not a final

order in the main writ petition. Therefore, the interim direction given by this court cannot be taken as precedent and the withholding of the employer's contribution as per the advise of the employer cannot be said to be contrary to any law or illegal.

Hence, the writ petition deserves to be dismissed and the petitioner is not entitled for any relief. The writ petition is accordingly dismissed.

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K.C. Bhanu, J.

Date: --03—2005.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Regional Commissioner of Coal-Mines Provident Fund, Situated at Municipality Office, Godavarikhani, Karimnagar District

2. 2 CD copies.